

From: [Jessica Hernandez](#)
To: [Brian Darnell](#)
Cc: [Anne Foster](#); [Garyg Miller](#); [Robert Werner](#)
Subject: Re: Progress Update SJRF EPA Orders
Date: 10/11/2011 10:20 AM

Hi Brian--

Thank you for the update.

After reading your email, I wanted to quickly clarify one thing--

Because EPA and San Jacinto River Fleet (SJRF) have not entered into any formal enforcement order (such as an Administrative Order on Consent or Unilateral Administrative Order), it is important to avoid using language such as *EPA orders* or *pursuant to an EPA order*. While our preference will be to eventually enter into an Administrative Order on Consent with SJRF to perform the work, at this time, it is premature to refer to the proposed activities as such *i.e.* EPA is not *directing* SJRF to conduct these actions.

EPA is overly cautious when it comes to using this terminology because the legal consequences differ under CERCLA depending on whether a party is ordered to do something versus a party who voluntarily enters into an agreement to perform work.

Thank you and please let me know if you have any questions.

Jessica Hernandez
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Tel. (214) 665-8384
Fax (214) 665-6460



9549247